

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chairperson Bob Raney, on February 6, 1989, at 3:30 p.m.

ROLL CALL

Members Present: All

Members Excused: None

Members Absent: None

Staff Present: Claudia Montagne, Secretary; Hugh Zackheim, Staff Researcher, Environmental Quality Council

Announcements/Discussion: None

HEARING ON HB 486

Presentation and Opening Statement by Sponsor:

REP. GRADY, House District 47, said that contaminated groundwater from leaking landfills had been a persistent problem and the clean up had proven to be expensive and time consuming. He said the potential hazardous nature of solid waste landfills called for the implementation of systems that would monitor the extent of groundwater contamination caused by leakage.

REP. GRADY said the purpose of HB 486 was to establish appropriate guidelines for groundwater monitoring at municipal landfills serving populations of 5,000 or more. The Department of Health and Environmental Sciences (DHES) would establish a priority compliance list identifying sites that posed the greatest risk considering their proximity to drinking water supply, their hydrological and geographical characteristics, and age of the design of the site. This site specific information would be provided by the operator. The department would also require owners and operators of high priority sites to submit proposed plans to the department for accomplishing groundwater monitoring by January 1, 1991. All other sites must comply by January 1, 1992.

REP. GRADY then continued, reading most of the text of HB 486. He distributed EXHIBIT 1, a list of the landfill sites that

would be affected by the bill. It indicated those which had monitoring wells, those with confirmed leakage, and those with suspected leakage.

Testifying Proponents and Who They Represent:

Chris Kaufmann, Montana Environmental Information Center
James Leiter, Solid and Hazardous Waste Bureau of the
Montana Department of Health and Environmental Sciences
Willa Hall, League of Women Voters of Montana
Donna Tenneson, City/County Sanitation, Helena
Rep. Ben Cohen, House District 3
Kim Wilson, Montana Sierra Club
Stan Bradshaw, Montana Council, Trout Unlimited

Proponent Testimony:

CHRIS KAUFMANN testified as set forth in EXHIBIT 2.

JAMES LEITER testified as set forth in EXHIBIT 3.

WILLA HALL said LWV would like to add their support of the bill. She said the importance of protecting groundwater could not be understated, and that monitoring was a very important first step in that direction. She added that it was far more economical to monitor than to clean it up.

DONNA TENNESON said the city and county had been in their landfill for 1 year. During its development, her department worked closely with the state and were advised of the regulations coming up for the landfill by Jim Leiter of the Solid and Hazardous Waste Bureau. She said they had to put in four monitoring wells at the site, with the monitoring performed by Hydrometrics twice a year. She said their concern would be the contamination of drinking water, and said that the groundwater was down 240-260 feet, which was probably a lot further than most sites. She expressed appreciation to the department for the support and advise they had provided and supported the bill.

REP. COHEN testified for the bill and said that he was a garbage hauler and past president of Montana Solid Waste Contractors Association. He said the people in the industry had been very conscious of the regulations that had been coming down. He said that he personally, and others like Ms Tennyson, felt that this was really the right step for the state to be taking now so that it did not find itself in trouble when the federal regulations were imposed. He said the state needed to start taking the appropriate action now.

KIM WILSON said the need for improved monitoring and watching of the groundwater situation in Montana was becoming increasingly clear. He said it was borne out by the number of communities that applied for Renewable Resource and

Development grant monies to monitor their ground water in the last cycle of the grant proposals.

STAN BRADSHAW said he expressed TU's support for HB 486.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Submitted Opponent Testimony:

Lester Ollerman, Mayor, Glendive (EXHIBIT 4)

Questions From Committee Members:

REP. ROTH asked where the information sheet on landfills and wells (EXHIBIT 1) originated. CHRIS KAUFMANN responded that the information originated from Mr. Leiter's department.

REP. ROTH asked Jim Leiter what was being used as the nearwater site for the Billings landfill. MR. LEITER said the nearwater in general would be either surface water or the closest drinking water well. In that case, it was probably the river. REP. ROTH asked Mr. Leiter how he explained the testimony that for the Helena landfill, the groundwater depth was 240 feet, while the list indicated 20 feet. JIM LEITER said the testimony was for a different landfill, a private city/county landfill, while the 20 foot figure was for the Helena landfill.

REP. ROTH asked Rep. Cohen if he, as a private hauler, would pass additional charges on to his customers, and asked if he was regulated by the Public Service Commission. REP. COHEN said he was regulated by the PSC. REP. ROTH asked if he would have to go to the PSC to pass additional charges on to the customers. REP. COHEN said no, because private haulers were regulated by territory, and were not rate regulated. In addition, he said many of the landfills did not attach their user fees through the hauler, but rather through some taxing jurisdiction. For example, in Flathead County he said there was a refuse disposal district that had a special assessment on the tax rolls. The landfill and the governing body would use the reported amount of garbage picked up for the setting of the assessment.

REP. ROTH asked if the increased charge would be passed on as a tax increase to the local taxpayers of the district. REP. COHEN replied it would be passed on where there were districts in the form of a special assessment.

REP. GILBERT asked Mr. Leiter how many FTE's he estimated his department would need for this program. JIM LEITER said 1.5

FTE's, a full-time hydrogeologist and a half-time clerical person. REP. GILBERT asked how the department would monitor all the landfill sites in the state with those 1.5 FTE's. MR. LEITER said the fiscal note covered that. The bill would require 28-30 landfills initially to have the monitoring by 1991 or 1992. The department would pass the requirements onto the individual landfill operators, who would be required to recommend a system to the department through a hydrogeologist they would retain. The retained hydrogeologist would do the monitoring themselves and submit the results to DHES for review.

MR. LEITER said the department hydrogeologist would be there to review the proposals, to do field inspections, and to work with the enforcement of the requirements. REP. GILBERT asked if this was in the department's proposed budget for the coming biennium. MR. LEITER said no. REP. GILBERT said he had a problem with that since, DHES's budget was presently being funded out of the junk vehicle fee. He asked how much he thought that fee could stand. MR. LEITER said the department had a problem with that too and could not answer that question.

REP. GILBERT asked that the committee review the fiscal note. REP. RANEY requested that copies of the fiscal note be given to all committee members for review prior to executive action.

REP. COHEN asked about the resolution introduced by Rep. Menahan that addressed the federal monitoring regulations and their impact on the Anaconda landfill. MR. LEITER responded that the federal government had proposed some stringent landfill regulations which would include groundwater monitoring requirements for virtually every landfill. In an effort to keep communities informed of the costs of that, the department had circulated a copy of the rules and a cover letter, and had met with as many people as they could about those proposed federal requirements. He said they were not anticipated to be finalized until December, 1989, and probably would not be effective for existing landfills until May of 1991.

MR. LEITER said that the regulations, among other things, required ground water monitoring systems, post-closure monitoring for a minimum period of 30 years, financial assurance for closure costs and the potential groundwater contamination that might be caused after the closure, and a gate keeper who would be knowledgeable about hazardous waste and randomly inspect loads. He said the proposed regulations had raised the concern of many people, especially in rural areas, regarding the continued operation of the landfills and at what cost.

MR. LEITER said Rep. Menahan's resolution was to ask the EPA to give special consideration to Montana, particularly its

rural sites. He told the committee those proposed regulations from the federal government were already in effect in 2/3 of the states, some with even more stringent regulations. He said Congress had mandated EPA pass those regulations because many states were running out of landfill sites, and there was an increase of interstate transportation of garbage, infectious waste and special waste.

MR. LEITER said the costs of disposal of refuse were escalating, with the Montana average at \$8-10 a ton while in New Jersey, it was \$150 per ton. Montana was getting inquiries from persons in New Jersey wanting to transport garbage here because it was cheaper. He said Congress, in its effort to pass comprehensive landfill regulations, was trying to do something about that. The federal government was encouraging communities to plan now, to recycle and to reduce the amount of garbage being disposed. The state was also trying to reach as many small communities as it could with planning and technical assistance.

The Anaconda landfill was a classic example of what this bill could remedy. The landfill had a spring running through it, and a stream at its toe. MR. LEITER said it was a site on which the department did not require monitoring in the first place. If the department had, the contamination problem would have been detected. Before, the department lacked the manpower and enforcement authority to require that monitoring. He said that recently they had revoked their license and were in the process of negotiating with them.

REP. GILBERT stated that \$25,000 would not seem adequate funding for the kinds of requirements that he was addressing. MR. LEITER said the community would propose a monitoring system to the department by using the services of a qualified hydrogeological consultant who would evaluate the site. Currently there were two firms in Helena that were doing this kind of work, and any number of firms were available to do the work. The cost to hire a consultant to site the monitoring well, and assist in the drilling, would be in the range of \$5,000.

REP. GILBERT said that most of the areas in question were rural, and doubted the presence of qualified consultants in those areas. He suggested the costs would be higher than Mr. Leiter was indicating. MR. LEITER said he did not think the department's figures were inaccurate.

REP. HARPER asked what kind of financial assistance the state could offer to local governments. He commented that there used to be a bill stating that the state could not adopt additional regulations which would increase the costs to local government without including a funding mechanism.

REP. RANEY asked Jim Leiter how often the well would have to be monitored, what the procedures were, and how much it would cost each year. MR. LEITER said that would be developed in the rules. Typically, a landfill would be monitored twice a year, the cost of which would range from \$200 to \$600 per sample, depending upon the numbers of parameters sampled. Therefore, for a landfill with four wells, monitored twice a year, the cost would be approximately \$5,000. REP. RANEY asked how long it would be before the federal regulations were required. MR. LEITER said the earliest date would be 1991 at existing landfill sites.

REP. RANEY asked how the department arrived at the \$25,000 figure for each landfill. MR. LEITER said they had figured 6 wells, 60 feet deep each, at a cost of \$3,000 per well, or \$18,000. In addition, there would be \$5,000 for a hydrogeological evaluation, and \$7,200 per year for the ongoing sampling costs. He said these were top end estimates. He suggested that these costs, amortized over the life of a landfill would not mean much increase cost per user per year.

Closing by Sponsor: REP. GRADY said he decided to carry HB 486 bill because the human consumption of water was an important issue. He said he understood and appreciated the financial impact to the counties, having experienced the increased costs in Lewis and Clark County, but said the money would be well spent. He said the figures on the fiscal note would not be necessarily the same for all districts, and he commented that Rep. Menahan's resolution could ward off some of the impacts of the regulations, but it would not off ward off the monitoring wells. That was something that must be done. He encouraged the committee to take positive action on the bill.

HEARING ON HB 498

Presentation and Opening Statement by Sponsor:

REP. GRADY introduced HB 498 at the request of his constituents, the majority of whom had wells. He said the property changed hands quite often, and well log information got lost, or was never given by the prior owner to the new owner. He said there was no record of the well log information at the Department of Natural Resources and Conservation, or it often could not be found. These constituents asked that Rep. Grady introduce legislation that would stamp the well log information on the casing or the cap. The information to be provided by the driller would be the date of the completed drilling, the depth of the well, the number of gallons per minute the well was capable of producing, and the name of the contractor

drilling the well. He said this was key information that could make a difference to a prospective buyer.

Testifying Proponents and Who They Represent:

Ken Russell, self, Helena Valley
Rich Brasch, Department of Natural Resources and
Conservation (DNRC), Water Resources Division

Proponent Testimony:

KEN RUSSELL said he could not find the records on the well when he bought his property. He said he wanted to see this information included on the well casing, in the form of a name plate. Information on the name plate would include the name of the well driller, and his number, the depth, gallons per minute, date of completion, as well as the township, section and range in which it was drilled. This would assure the buyer of correct information if the records should be destroyed or lost.

RICH BRASCH reviewed the ways in which DNRC handled groundwater appropriation and well logs in particular. There were two different sets of criteria, one for wells over 100 gallons per minute (gpm) and one for wells less than 100 gpm. For those over 100 gpm, DNRC handled about 50 applications per year, and for those under 100 gpm, the department handled from 2,500 to 3,000 certificates of water rights per year. He said the bill applied to the wells under 100 gpm, which could be drilled before the department gives its approval. The well log is sent into DNRC by the drillers and is held until the notice of completion comes from the well owner at the time the water is put to beneficial use. At that time the notice is combined with the well log and filed in the department's computer system and generally can be accessed by knowing the name of the well owner or the location of the well.

For wells over 100 gpm, those appropriations must receive prior approval by the DNRC, so the driller's log would come in after the permit has been granted. He said that, again, the information is combined and put into the computerized files. MR. BRASCH said DNRC generally received about 25,000 well related information requests per year, a substantial portion of which had to do with well logs. He said the type of information requested varied, as did the individuals making the requests.

Testifying Opponents and Who They Represent:

Wes Lindsay, licensed water contractor,

Opponent Testimony:

WES LINDSAY said he was Chair of the Montana State Water Well Board but had not had time to meet with them for a formal position on this bill. However, he said he was representing about 200 water well drillers in Montana. He said they found fault with this stamping of the casing with this information on each and every well. They figure that their name and license number on the cap was enough. They also felt that the water well logs that they file with DNRC was their obligation. He said that since 1973, with the passage of the Water Use Act, DNRC began keeping track of all water rights in the state. He said as of last year, the department had about 99% of all the wells drilled on record. He said he replaced well caps every year when they break, or when people throw them away. He said the answer would be that DNRC keep up its records.

Questions From Committee Members:

- REP. GILBERT asked Rep. Grady if his wells were residential or stock wells, and asked if he would object to an amendment making the bill applicable to all wells, not just residential wells. REP. GRADY said about 4 of his wells were residential, and that he would have no objections to the amendment.
- REP. O'KEEFE asked if this requirement could be applied to developed springs, since under DNRC's groundwater provisions and under the filing of well logs, an individual must also supply the same information for the development of springs. REP. GRADY said he did not address springs because most of his constituents did not have springs. He did not have a problem expanding the purview, but said it would be getting into a different area. REP. O'KEEFE clarified that he was referring to commercially developed springs. REP. GRADY said the information was certainly helpful.
- REP. HANNAH asked if sandpoint wells used for irrigating lawns be included in this bill. REP. GRADY said he did not believe they would be because it would not be classified as drilling. RICH BRASCH from the department said he believed the definition of a water well drill was still 25 feet or more.
- REP. RANEY asked a member of the audience to address the issue, and DIANA CUTLER, Program Specialist for the Board of Water Well Contractors, said the water well law read that if the well was for domestic purposes, its depth did not matter. If, however, it was a well for irrigation, those less than 25 feet were not considered a water well, and no license to drill was needed and it did not to meet construction standards.

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REP. HANNAH asked if sandpoint wells under 25 feet were included in the water rights. MR. BRASCH said if water was withdrawn for the beneficial use, such as irrigation, it would fall under the water rights requirements.

REP. O'KEEFE noted that was only a filing of a notice of completion, and MR. BRASCH said he was referring to usage of under 100 gallons per minute. MR. LINDSAY said that the Water Use Act of 1973 excluded wells under 25 feet dug with a back hoe, and said they were not within the Water Rights Division.

REP. RANEY asked Mr. Lindsay how much would it cost him to comply with this. MR. LINDSAY said in order to do it properly, it would cost \$30 to \$50 per well, which would be passed on in the cost to the customer. REP. RANEY asked if it would be possible to simply place a tag on, such as the tag on water meters. MR. LINDSAY questioned how long a tag would stay.

REP. RANEY asked the sponsor what he envisioned as a method that would be permanent. REP. GRADY said he was leaving that up to the contractor drilling the well, and did not specify how except that the stamping would last over time. MR. LINDSAY commented that after one year the gallons per minute could change. Real estate companies would always have a well test completed when a piece of property was sold. That was the only true test.

REP. OWENS asked Mr. Lindsay if there were any liability problems with this information being tampered with or falsified. MR. LINDSAY said that had happened where someone had placed false information or changed the information in regard to gallons per minute. Again, he said the only meaningful test would be an actual test of gallons per minute at any particular time.

REP. GILBERT asked how this would work with the new method of using PVC pipe. REP. GRADY said he was not aware of many wells that used PVC, but said the bill left it up to the well driller as to how to mark the well.

REP. RANEY asked Diana Cutler if she wished to comment, and she said that, according to construction standards, every well must have 18 feet of steel casing below ground and 18 inches of steel casing above ground.

Closing by Sponsor:

REP. GRADY closed, saying he contacted well drillers and did not get much opposition. He said the costs quoted by Mr. Lindsay were exaggerated, and would be passed on to the customer. He said the requirement would be a benefit to the people who had those wells. He added that he preferred the information to be placed on the casing because the caps could get lost.

DISPOSITION OF HB 498

Discussion: REP. HARPER recommended holding the bill and waiting to see how the well drillers felt about the bill when they met later in the week. REP. GILBERT concurred with Rep. Harper to either hold or table the bill until the committee heard from the well drillers.

REP. O'KEEFE remarked that he did not think the bill necessary, as it might have been in 1983 before the well log data had been entered on the computer.

REP. ROTH also thought the bill unnecessary because of the variation in well flow amounts.

Amendments, Discussion, and Votes: None

Recommendation and Vote: REP. ROTH moved to TABLE the bill. The motion CARRIED unanimously.

HEARING ON HB 484

Presentation and Opening Statement by Sponsor:

REP. HANNAH, House District 86, opened on the bill which would provide some control and education for commercial uses of small amounts of hazardous materials, specifically chlorinated and halogenated solvents. He distributed EXHIBITS 5 and 6, a fiscal note and the background information of the bill. EXHIBIT 6 contained pertinent portions of a studies prepared by EQC and the Department of Health and Environmental Sciences, Solid and Hazardous Waste Bureau, on small quantity generators of hazardous waste in the state.

REP. HANNAH said the problem associated with chlorinated and halogenated solvents was that people mixed them with used oil. This would be sold to the used oil distributor, who would then mix that with all of his oil, and spray this contaminated stock on county roads. Another disposal problem occurred when this product was burned. He said the recommendations in the reports would be to require that all loads of oil be tested. REP. HANNAH said he preferred a more nonintrusive measure to be educational and to warn individuals of the hazards and proper disposal methods.

REP. HANNAH went through the provisions of the bill. Registration would be required of users more than 20 gallons of these solvents. The department could then suggest methods of disposal. The solvents could be recycled, treated, or hauled away to a disposal site.

Testifying Proponents and Who They Represent:

Bill Potts, Department of Health and Environmental Sciences
Chris Kaufmann, Montana Environmental Information Center

Proponent Testimony:

BILL POTTS, with the Solid and Hazardous Waste Bureau, DHES,
testified as set forth in EXHIBIT 7.

CHRIS KAUFMANN said MEIC favored any legislation that would discourage the use of these types of solvents. For those businesses that still needed to use these solvents, the registration procedure would allow the department to know who was using them, and how they were disposing them. She said the bill encouraged recycling which was a good policy.

Testifying Opponents and Who They Represent:

None

Opponent Testimony:

None

Questions From Committee Members:

REP. GIACOMETTO asked how much will the license cost. REP. HANNAH said it was not a license, but a registration procedure. He said there would be no additional cost to the department, as indicated in the fiscal note.

REP. ROTH asked if there would be follow-up inspections conducted by the department. MR. POTTS said the majority of those persons would not be regulated by the department's hazardous waste program, but would be conditionally exempt. Normally there would be no follow-up.

REP. RANEY asked if these chlorinated and halogenated solvents were the same compounds that were in the groundwater underneath Livingston, and MR. POTTS said yes. He said that the contaminants under Whitefish, Missoula, Great Falls, Havre and Glendive were more diesel fuel related.

REP. KADAS asked MR. POTTS if it would be a good idea to include in the language of the bill the person who buys 20 gallons or more per year. MR. POTTS said that was discussed in drafting the bill, and it was decided that it was preferable to have a central spot from which the chemicals were dispensed as the point of control and notification. REP. KADAS said he agreed that the department would catch more people at the point of sale, and suggested doing both. MR. POTTS said he thought that would not be very effective, and would be redundant.

REP. KADAS asked what kinds of penalties were there for a neighbor who dumped this stuff in the back alley. REP. HANNAH said there really was not a lot that you can do, and deferred to Mr. Potts. MR. POTTS said that a conditionally exempt generator (one who generated less than 220 lbs in any one month) had three options: 1) legitimate recycling reuse; 2) send the solvent to a permitted hazardous waste facility; and 3) disposal at a solid waste facility. In other words, it was against the law for anyone to dump a hazardous substance in an alley way.

REP. GILBERT commented that these solvents were in limited and specialized use in the state, having been replaced by mineral spirits, or Stoddard solvents, which were not classified as a regulated hazardous substance.

Closing by Sponsor:

REP. HANNAH said the bill was a sound idea and would help the department to control some of the problems associated with these dangerous compounds.

DISPOSITION OF HB 484

Motion: REP. HANNAH moved that HB 484 DO PASS.

Discussion: None

Amendments, Discussion, and Votes: None

Recommendation and Vote: The motion CARRIED.

DISPOSITION OF HB 462

Hearing 2/03/89

Motion: REP. ADDY moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. HARPER moved the amendments proposed by George Ochenski on behalf of REP. HARPER. REP. RANEY asked the researcher to read those amendments. Essentially, health would be included in the list of items to assess, hydro-electric would be inserted in front of utilities, an ex-officio member of the Soil Conservation Service would be added, and the word "commissioner" in the bill should be changed to "mediator" to keep the bill in concert with Rep. Thoft's bill, which gave the Governor authority to appoint water mediators rather than water commissioners.

REP. GIACOMETTO added that in the Ochenski amendments, both the Soil Conservation Service and the Conservation District would be ex-officio members of the commission. A discussion followed regarding the request by the Conservation District to be a full member of the commission. REP. GIACOMETTO clarified that because of the gray area regarding what was or was not an agency, by making them full representatives a precedent might be set that everyone should be a voting member.

The motion on the amendments CARRIED.

Recommendation, Discussion and Vote: REP. ADDY moved the bill DO PASS AS AMENDED.

REP. O'KEEFE commented that if the bill went through with the appropriation, the money would most likely come from the Prairie County Conservation District and the Carbon County Conservation District's Water Development grants. He said he had spoken with Rep. Spaeth, the Chair of the Natural Resources Subcommittee, and with George Ochenski and other proponents. He said everyone was in agreement that they did not want to take the appropriation from the bottom of the Water Development Grants list. He said the consensus was to try to get the appropriation from the agency budget, with that determination falling to Rep. Spaeth's subcommittee. With that taken care of, REP. O'KEEFE supported the bill. He said the funding would have to come from the \$3.8 million RIT money, which was now going to run the agencies.

REP. GILBERT said he agreed with Rep. O'Keefe about defending the grants and loans appropriations. He asked if any changes should be made in the bill now, or if those changes should be left to the subcommittee. REP. O'KEEFE said Rep. Spaeth would handle the funding changes. He said they should "kick it out" of committee, and assume that the Natural Resources Subcommittee to Appropriations, if they fund it at all, would fund it out of what they deemed to be fat in the department budget.

REP. HARPER suggested tagging some of the RIT money that was hidden in the agency budget. REP. O'KEEFE said the committee could do that, and that it would help pass the bill on the floor.

A discussion followed regarding the wisdom of amending the bill in committee, or passing it out for transfer to Appropriations. REP. RANEY said this was too important of an issue to wait and see on, and recommended the committee move the bill. REP. GILBERT agreed, stating that it was not a political issue, but a good government issue. He suggesting putting it on the floor and trusting the process.

REP. ADDY's motion CARRIED.

DISPOSITION OF HB 463

Hearing 2/03/89

Motion: REP. SMITH moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. SMITH moved the amendments of Rep. Thoft. The motion CARRIED.

Recommendation, Discussion and Vote: REP. SMITH moved the bill DO PASS AS AMENDED.

REP. KADAS expressed concern about a section of the gray bill. He said he did not agree with the language "appropriated from the renewable resources development council, any remaining money necessary to provide for complete funding". He said that language could be interpreted two ways. "Complete" could mean up to \$10,000, or could mean whatever they deem "complete". REP. RANEY said that the researcher had language ready to address that issue, and MR. ZACKHEIM read language that would ensure a ceiling of \$10,000. REP. KADAS moved the language. The Kadas amendment CARRIED unanimously.

REP. SMITH's motion CARRIED unanimously.

DISPOSITION OF HB 327

Hearing 1/27/89

Executive Action 1/30/89 and 2/01/89

Motion: REP. GIACOMETTO moved the bill DO PASS AS AMENDED.

Discussion: REP. COHEN reported that the Superintendent of Glacier Park had on a number of occasions requested in writing that any oil wells anywhere in the perimeter of the park have full EIS done. He said that a full EIS was not done on this particular well Cenex had started. However, in the EA, it was stated that before there was full development of that oil field, there would be a full EIS prepared. He said it was his understanding that the department inadvertently misled the oil company, and was now trying to correct its mistake. He withdrew his objections to the bill.

Amendments, Discussion, and Votes: REP. GIACOMETTO said the committee understood the amendments passed previously, one which changed it to leases within the immediate area, and another which added language for natural disasters.

Recommendation and Vote: The motion CARRIED unanimously.

DISPOSITION OF HB 367

Hearing 2/01/89

Motion: REP. O'KEEFE moved the bill DO PASS.

Discussion: None

Amendments, Discussion, and Votes: REP. O'KEEFE moved the amendments. REP. O'KEEFE stated that the bill would allow DNRC to use funds in the Water Development special revenue account and general obligation bond proceeds to buy off liens, to save its investments and projects, and then to immediately sell them to get the money back into those accounts. He said the amendments clearly stated that legislative intent was for the state to resell properties and to get out of the agricultural and hydroelectric business.

The motion on the amendments CARRIED unanimously.

REP. O'KEEFE moved the Statement of Intent, in which were added the provisions that every effort would be made to avoid forced loan collections, a Stephens administration request, and that it was the intent to resell the properties as expeditiously as possible.

The motion CARRIED unanimously.

Recommendation, Discussion and Vote: REP. O'KEEFE moved HB 367 DO PASS AS AMENDED.

REP. ADDY asked if the language indicating resale as expeditiously as possible could indicate that the state sell for liquidation prices. REP. RANEY said that the language indicated that the resale was for the purposes of recovering funds used. REP. HANNAH said he was also concerned that the state could be at risk for getting its money back. He said that with liens picked up on property in default, it was important to note that the property was not worth market value. REP. HANNAH asked if there were there properties that were in foreclosure that the state would go after. REP. O'KEEFE said there were several potential situations mentioned in the hearing where owners might simply walk away. He appreciated the concern expressed by Rep. Hannah, but said that if the legislature did not allow the department to do this, they could be "out" every time a project or property was foreclosed.

REP. GILBERT stated that when you repossess property, you never get what it is worth. However, you try to get as much as you can. He said the state must make a conscious effort to sell the property in a timely manner but not give it away.

REP. OWENS concurred with the statement of Rep. Gilbert.

REP. RANEY noted that a section in the Statement of Intent had to be replaced with 85-1-615, a technical amendment.

REP. GIACOMETTO moved the amendment, and the motion CARRIED.

The motion on the bill, DO PASS AS AMENDED, CARRIED, with one dissenting vote from Rep. Hannah.

DISPOSITION OF HB 399

Hearing 2/01/89

Motion: REP. O'KEEFE moved the bill DO PASS.

Discussion: REP. O'KEEFE said the bill was essentially a Water Rights clean-up bill, and said it addressed four different topics: possessory interest in the area where the water was going to be used; criteria for the issuance of the permit; the creation of a three year trial period for changes in an appropriation right; and the requirement that adequate diversion structures are installed and that measuring take place at that point.

REP. O'KEEFE clarified that his reference to the Iverson bill, and suggestion that this bill be held for that was made in error.

REP. HARPER brought up Carol Mosher's concern regarding the language "at the proposed point of diversion". He said the committee should look at this concern because it could adversely effect the senior water right holders.

REP. O'KEEFE replied that the answer to that was the other "shalls". He particularly mentioned "shall no. 2", which says "in the amount the applicant seeks to appropriate", which falls under "there are unappropriated waters in the source of the supply." He said he understood Ms. Mosher's concern. But that should be covered by the other "shalls" that are protecting that prior right.

REP. HARPER said that in order to validate a water right, the water had to be put to a beneficial use. If it was unavailable to an individual at the source of diversion, he could not effectuate a water right. He commented that what Rep. O'Keefe was saying was right, but commented that there could be a better way. REP. RANEY reminded Rep. O'Keefe that before the department did what the bill was stating, the user requesting the water had to prove that the water rights of the prior appropriator would not be adversely affected. REP. O'KEEFE added that the way that the department did that was by notifying senior water rights holders and publishing it in the paper. If the senior water

rights holder did not object, the permit or change would be approved. In that case, it was the burden for the water rights holder to object to a new appropriation. He said the department would have to send out a lot fewer letters by telling the applicant that there was no water at the proposed point of diversion.

REP. ROTH asked if there was certain amount of water that was left after appropriations for stream flow. REP. O'KEEFE said no, except for some instances where there were instream flow reserves under the 1982 Yellowstone reservations or the instream water rights on eleven blue ribbon trout streams under the 1969 Murphy's law. He added that anyone who had rights senior to those dates on those streams could take their water even if it dried up the stream.

REP. ROTH asked who represented the stream. REP. O'KEEFE said DNRC did represent the stream until Rep. Westlake's bill was passed that day. DNRC had the provision to confront an individual with adversely affecting water rights in a stream. With Westlake's bill, DNRC would no longer be able to do that. He said that DNRC did not deal with fish and wildlife considerations in streams; DFWP did. He said that this bill had nothing to do with instream flow requirements.

REP. HARPER asked again how to address the concerns expressed by Carol Mosher. He said that even under the scenario of Rep. O'Keefe, it was possible that a person could get an easement across his neighbor's land, put a pipe downstream to where the next tributary came in, pump the water back up, and file the water right.

REP. O'KEEFE said that since 1983, people do not have "water rights"; they have "water use permits". He said that if people were to go downstream, bring the water back up the drainage and use it on their land, they would have a valid water use permit providing they were not adversely affecting anyone below the diversion point. He said it was not illegal to use hydroelectricity to pump water back upstream to irrigate. He said what Carol Mosher was explaining was stealing water from senior water users above them. He said this bill was trying to do away with the department having to issue a permit in those situations where people can think that they are doing that legally because there was unappropriated water in the source of supply.

REP. HARPER commented that senior water rights holders, through their paid lobbyist, were saying that this bill was a danger to them. He said he thought the bill offered them more protection but their lobbyist did not agree. He said he was concerned about passing this without thinking it through.

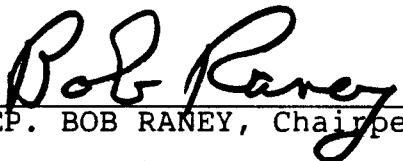
REP. KADAS commented that if the committee thought it should be in the bill, it was up to the other side to make their case on the floor and take it out.

Amendments, Discussion, and Votes: REP. RANEY asked the researcher to clarify the technical amendment to the committee. REP. ADDY moved the amendment, and the motion CARRIED.

Recommendation and Vote: REP. ADDY moved the bill DO PASS AS AMENDED. The motion CARRIED unanimously.

ADJOURNMENT

Adjournment At: 6:05 p.m.



REP. BOB RANEY, Chairperson

BR/cm

3112.min

DAILY ROLL CALL

HOUSE NATURAL RESOURCES

COMMITTEE

50th LEGISLATIVE SESSION -- 1989

Date 2-6-89

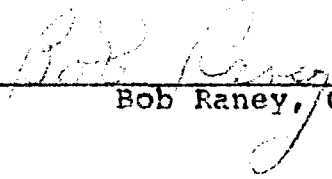
NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Raney, Chairman	✓		
Rep. Ben Cohen, Vice-Chairman	✓		
Rep. Kelly Addy	✓		
Rep. Vivian Brooke	✓		
Rep. Hal Harper	✓		
Rep. Mike Kadas	✓		
Rep. Mary McDonough	✓		
Rep. Janet Moore	✓		
Rep. Mark O'Keefe	✓		
Rep. Robert Clark	✓		
Rep. Leo Giacometto	✓		
Rep. Bob Gilbert	✓		
Rep. Tom Hannah	✓		
Rep. Lum Owens	✓		
Rep. Rande Roth	✓		
Rep. Clyde Smith	✓		

STANDING COMMITTEE REPORT

February 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report
that House Bill 484 (first reading copy -- white) do pass.

Signed: 
Bob Raney, Chairman

STANDING COMMITTEE REPORT

February 7, 1989

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 462 (first reading copy -- white) do pass as amended .

Signed: _____

Bob Raney
Bob Raney, Chairman

And, that such amendments read:

1. Page 1, line 23.

Following: "people,"

Insert: "health,"

2. Page 2, line 23.

Strike: "17"

Insert: "19"

3. Page 3, line 8.

Following: "of"

Insert: "hydroelectric"

4. Page 4, line 1.

Strike: "and"

5. Page 4, line 3.

Following: "service"

Insert: "; (r) one ex officio member who is a representative of the United States soil conservation service; and (s) one ex officio member who is a representative of a conservation district"

6. Page 4, line 24.

Strike: "coordinate"

Insert: "review"

7. Page 5, line 3.

Strike: "set"

Insert: "recommend"

February 7, 1989
Page 2 of 2

8. Page 6, line 13.

Strike: "apply to"

Insert: "request that"

Strike: "for appointment of"

Insert: "appoint"

9. Page 6, line 14.

Strike: "commissioner"

Insert: "mediator"

Strike: "[section 3] of Bill No. "

Insert: "[section 1] of House Bill No. 463 (second reading copy)"

STANDING COMMITTEE REPORT

February 7, 1989

Page 1 of 3

Mr. Speaker: We, the committee on Natural Resources report that House Bill 463 (first reading copy -- white) do pass as amended .

Signed: Bob Raney
Bob Raney / Chairman

And, that such amendments read:

1. Title, line 5.

Strike: "COMMISSIONER"

Insert: "MEDIATOR"

2. Title, line 6.

Strike: "DECREE OR"

3. Title, lines 6 through 12.

Following: "BASIN;" on line 6

Strike: remainder of line 6 through "COMMISSIONER;" on line 12

4. Title, line 13.

Following: "COMMISSIONERS"

Insert: "AND MEDIATORS"

5. Title, lines 14 through 16.

Following: "APPROPRIATION;" on line 14

Strike: remainder of line 14 through "MCA;" on line 16

6. Page 1, line 19 through line 4, page 12.

Strike: sections 1 through 8 in their entirety

Insert: "NEW SECTION. Section 1. Appointment of water mediators. (1) The judge of the district court may appoint a water mediator to mediate a water controversy in a nondecreed basin under the following circumstances:

(a) upon request of the governor;

(b) upon petition by at least 15% of the owners of water rights in a nondecreed basin; or

(c) upon petition by a state agency with water-related interests.

(2) A water mediator appointed under this section may:

(a) discuss proposed solutions to a water controversy with affected water right holders;

(b) discuss water use and water needs with persons and entities affected by the existing water use;

(c) meet with principal parties to mediate differences over the use of water; and

(d) hold public meetings and conferences to discuss and negotiate potential solutions to controversies over use of water.

(3) If the governor requests or a state agency petitions for a water mediator, the governor or agency shall pay all or a majority of the costs of the water mediator, as determined equitable by the district court having jurisdiction.

(4) The governor may use funds appropriated under 10-3-312 to pay the costs of a water mediator."

Renumber: subsequent sections

7. Page 12, line 5.

Following: "commissioner"

Insert: "and mediator"

8. Page 12, line 11.

Following: "commissioners"

Insert: "and mediators"

9. Page 12, line 12.

Following: "commissioner"

Insert: "and mediator"

10. Page 12, line 15.

Following: "commissioner"

Insert: "and mediator"

11. Page 12, line 17.

Following: "commissioners"

Insert: "or mediators"

12. Page 12, lines 18 through 23.

Following: "(1)"

Strike: the remainder of line 18 through "(2)" on line 23

13. Page 13, line 2.

Following: "commissioners"

Insert: "and mediators"

14. Page 13, line 3.

Strike: "(3)"

Insert: "(2)"

Strike: "funding"
Insert: "\$10,000"

15. Page 13, line 5.
Strike: "or (2)"

16. Page 13, lines 6 and 7.
Strike: "any" on line 6 through "funding" on line 7
Insert: "an amount of money equal to the difference between
\$10,000 and the money received by the department from the
water development special revenue account under subsection
(1)"

17. Page 13, line 9.
Following: line 8
Strike: "[Section 9]"
Insert: "[Sections 1 and 2]"
Strike: "is"
Insert: "are"

18. Page 13, line 11.
Strike: "[section 9]"
Insert: "[sections 1 and 2]"

STANDING COMMITTEE REPORT

February 7, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Natural Resources report that House Bill 327 (first reading copy -- white) do pass as amended .

Signed: Bob Raney
Bob Raney, Chairman

And, that such amendments read:

1. Title, line 7.

Following: "WHERE"

Insert: ", DUE TO LITIGATION, STATE COMPLIANCE WITH THE MONTANA ENVIRONMENTAL POLICY ACT, OR ADVERSE CONDITIONS CAUSED BY NATURAL OCCURRENCES,"

2. Title, lines 8 and 9.

Following: "BEEN"

Strike: "THREATENED" on line 8 through "LITIGATION" on line 9

Insert: "PREVENTED OR THE LESSEE IS THREATENED WITH SUBSTANTIAL ECONOMIC LOSS"

3. Page 2, line 8.

Following: "litigation"

Insert: "regarding the lease or another lease in the immediate area held by the same lessee"

4. Page 2, lines 11 and 12.

Strike: "operating"

Following: "conditions"

Strike: "beyond" on line 11 through "lessee" on line 12

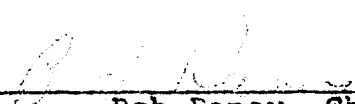
Insert: "caused by natural occurrences"

STANDING COMMITTEE REPORT

February 7, 1969

Page 1 of 2

Mr. Speaker: We, the committee on Natural Resources report that House Bill 367 (first reading copy -- white) do pass as amended .

Signed: 
Bob Raney, Chairman

And, that such amendments read:

1. Page 1.

Following: line 12.

Insert: "STATEMENT OF INTENT

This bill would allow the department of natural resources and conservation to use funds in the water development special revenue account and water development general obligation bond proceeds to protect loans made under the water development private loan program.

The program has made approximately 55 loans totalling \$4 million to private individuals, primarily for irrigation projects. In the event that any lien holder or the department would have to foreclose on any of these loans, the department would need to be in a position to protect its security interests. These loans are primarily secured with real estate mortgages. In those instances where the department is not in first lien position and a foreclosure is necessary, the department would need funds to buy out the first lien holder to gain control of the property. The property would then be resold to recoup the funds used to buy out the first lien as well as the department's initial loan funds.

This bill would also allow the department to use these funds to operate a project if a loan should go into default. If the loan recipient should walk away from a project, the department may need to temporarily operate the project to secure its interests until foreclosure proceedings are complete. An example would be a hydropower project that requires continual attention to guard against breakdown or damage.

This bill is intended to give the department access to funds that would be used to protect its security interests when other loan collection efforts have not worked. It is the intent of the legislature that every effort be made to avoid forced loan

collections. It is further the intent of the legislature that any property acquired in the manner provided for in HB 367 be resold as expeditiously as possible to recover funds used under 85-1-65 and funds loaned to the borrower."

2. Page 9, line 4.

Strike: "and"

Insert: ", "

3. Page 9, line 5.

Following: "operation"

Insert: ", and resale"

4. Page 10.

Following: line 13

Insert: "(3) Any property acquired under the provisions of this section must be resold as expeditiously as possible to recover funds used under this section and funds loaned to the borrower."

NO - NO MONITORING

YES = ADEQUATE MONITORING FOR THIS BILL

PARTIAL = SOME MONITORING, BUT NOT ADEQUATE FOR THIS BILL

L = Leaking

SUSP - Suspected Leaks

CONT = Leaking, but contained w/ S

Record#	COUNTY	CITY	POPULATION	SITENAME	DEPTH	GW	NEARWATER
39	GLACIER	CUT BANK	NO 5000	CUT BANK	18	1+	MI
14	CARBON		NO 5500	CARBON CO. LANDFILL	0	2	MI
50	LAKE	POLSON	NO 6000	POLSON LANDFILL	200	1/2	MI
59	MADISON	ENNIS	NO 6000	ENNIS	50	1	MI
2	BEAVERHEAD	DILLON	NO 6500	DILLON	0	1/2	MI
34	FERGUS		NO 7500	W.A. SPOJA JR. LANDFILL	65	1/2	MI
90	RICHLAND	SIDNEY	NO 9000	SIDNEY LANDFILL	35	1/4	MI
17	CASCADE	GREAT FALLS	NO 10000	CITY TRANSFER AND DISPOSAL	200	4	MI
24	CUSTER	MILES CITY	NO 10000	CUSTER CO. LANDFILL	95	1/2	MI
54	LEWIS AND CLARK	HELENA VALLEY	YES 10000	SCRATCH GRAVEL - (L)	65	1/4	MI
95	ROSEBUD	COLSTRIP	PARTIAL 10000	COLSTRIP LANDFILL	15	1/2	MI
113	VALLEY		PARTIAL 10250	VALLEY CO. LANDFILL	60	2	MI
27	DAWSON	GLENDAVE	NO 11000	GLENDAVE LANDFILL	100	1/2	MI
37	GALLATIN	LOGAN	PARTIAL 12000	LOGAN LANDFILL	60	1/4	MI
69	PARK	LIVINGSTON	NO 12000	PARK CO. LANDFILL	65	1/2	MI
88	RAVALLI	BITTERROOT VALLEY	PARTIAL 12000	BITTERROOT VALLEY LANDFILL - (L)	59	1,000'	
117	YELLOWSTONE	LAUREL	NO 12000	LAUREL	6	9/10	MI
58	LINCOLN	LIBBY	NO 13000	LIBBY LANDFILL	160	2	MI
29	DEER LODGE	ANACONDA	NO 15000	ANACONDA LANDFILL - (SUSP)	20	5	MI
84	POWELL	DEER LODGE	NO 15000	DEER LODGE LANDFILL	20	5	MI
32	FERGUS		NO 18000	MR. "M" DISPOSAL	100	1,500'	
12	BLAINE		PARTIAL 23000	UNIFIED DISPOSAL DIST. LANDFILL	60	1	MI
36	GALLATIN	BOZEMAN	YES 35000	BOZEMAN LANDFILL - (L)	50	1/4	MI
51	LEWIS AND CLARK	HELENA	YES 35000	HELENA - (L)	20	1/4	MI
35	FLATHEAD	KALISPELL	PARTIAL 45000	FLATHEAD CO. LANDFILL - (SUSP)	146	300'	
102	SILVER BOW	BUTTE	NO 45000	BUTTE	25	3/4	MI
18	CASCADE	GREAT FALLS	YES 65000	GREAT FALLS LANDFILL	30	1/4	MI
67	MISSOULA	MISSOULA	YES 67000	BFI OF MONTANA LANDFILL - (CONT)	65	2	MI
118	YELLOWSTONE	BILLINGS	YES 100000	BILLINGS - (L)	50	1,000'	

7,000 - 12,000 installed

2,000 - 3,000 - manufacturing & reporting

EXHIBIT
DATE HB 4B 486
2-6-89

Mr. Chair, members of the committee, for the record, my name is Chris Kaufmann. I'm representing the Montana Environmental Information Center and our members across the state in support of HB 486.

Nearly all of our members, as well as most of your constituents have a direct interest in this bill--at least if they drink water. HB 486 will provide information to citizens and authorities on the quality of our drinking water in the most populous areas of our state. Landfills serving a population base of 5000 or more people (approximately 23 out of the 120 landfills in the state) will be required to install a groundwater monitoring system under the guidance of Department of Health and Environmental Services. The information gathered will allow us to make the best choices about prevention and cleanup of contaminated drinking water.

The problem is that many municipal solid waste landfills are contaminating the groundwater of Montana and have great potential to harm human health. About 30% of the contents of a landfill is moisture. This "organic soup" is full of poisonous household chemicals and solvents. Unless a landfill is well-sited and designed with liners, this soup can leak down to the groundwater. In Montana, only 11 of the 120 landfills have any type of groundwater monitoring system in place. Of those, 6 are known to be leaking. It is reasonable to assume that 50 more landfills are leaking that we don't know about. We won't know, and won't be able to take corrective action and do effective planning, until we have

groundwater monitoring systems in place.

Citizens are becoming more sensitive to the importance of this issue. Recent polls show that the number of people who believe that groundwater pollution has become a serious problem grew from 28% in 1981 to 54% in 1988. Montanan's have a guaranteed constitutional right to a "clean and healthful environment". Surely this means the assurance of pure drinking water.

Monitoring at the Scratch Gravel Landfill has revealed contamination in 3 domestic wells. Lewis and Clark County is currently required to haul bottled water to about 10 households. It is likely that will need to be extended to 30 to 50 more households. A similar situation may be brewing in Kalispell. If we wait for the Environmental Protection Agency to establish new regulations, we may be hauling drinking water to many communities. We may be spending millions more dollars on cleanup in 1995, because we didn't have the information we needed to take corrective action in 1989. Landfill operators recognize that monitoring will be required soon, and will probably be happier to work with the state than with the EPA.

Of course this is going to cost someone some money. Installation of the system will cost \$7,000 to \$12,000. On-going monitoring and reporting costs will run about \$4,000 - \$5,000 a year. These costs will be borne by the landfill owner who will rightfully pass them on to the customer. While these costs will be a burden, the costs of public health problems and extensive groundwater cleanup would be a far greater burden.

2
DATE 5-6-89
FID 486

According to the EPA, the average cost of groundwater cleanup at a single landfill is 10 million dollars. Furthermore, I think it's time for an attitude adjustment in the U.S. It's time for U.S. citizens to accept the responsibility for being the trashiest people on earth. We each produce an average of 5 pounds of garbage a day, up from 2.9 pounds in 1960, and far more than our nearest competitors, the Europeans. It's time for Montanan's, along with other citizens of the U.S., to accept that the cost of consuming includes not only the cost of purchasing, but the cost of disposing of the resulting waste.

DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

EXHIBIT 2
DATE 2/6/89
HB 43486



STAN STEPHENS, GOVERNOR

COGSWELL BUILDING

STATE OF MONTANA

FAX # (406) 444-2606

HELENA, MONTANA 59620

Solid & Hazardous Waste Bureau
Telephone: (406) 444-2821

Testimony on House Bill 486

Mr/Madame Chairman, Ladies and Gentlemen of the committee, I am James Leiter from the Solid & Hazardous Waste Bureau of the Montana Department of Health and Environmental Sciences. I am the program manager for the municipal solid waste program, and I am here today as a proponent for House Bill 486. While H.B. 486 is not a department sponsored bill, we feel that it sets a framework for beginning to address some of the environmental problems we are observing at municipal waste disposal sites in Montana, problems which have developed due to our inability under the current solid waste act and rules to adequately monitor the environmental affects of landfill sites on ground and surface water.

We currently have about 125 municipal landfill sites in the state. Of these, only about a dozen, or approximately 10%, have monitoring wells. Perhaps six of these are adequate to effectively monitor the site's impact on groundwater. Of the approximately six sites with effective monitoring, we have confirmed groundwater contamination in five, and two of these have affected drinking water supplies used by as many as ten families. We have good reason to suspect that many of our other landfill sites are contaminating groundwater as well. If I had to make a guess, I would say that as many as 1/3 to 1/2 of our sites are affecting groundwater.

Only a few of our 125 sites have been placed in their existing locations due to environmental considerations, perhaps ten to twenty. The remainder sit where they do principally due to convenience or factors other than groundwater protection. Only recently have we required all new landfills to have groundwater monitoring information, and then only on questionable authority.

H.B. 486 makes our authority clear. We need to insure that our waste disposal does not affect our groundwater resources. In addition, we need to insure the public that the state will protect them from poor waste disposal practices.

I would, however, suggest one amendment to the bill. Currently many communities are realizing that alternative solid waste disposal solutions may better serve their needs than their existing landfill sites. Some are considering closing their existing sites in the near future. I would recommend the bill be amended so that the effective date is not immediate, but falls on October 1st. This will give these communities additional planning time and remove some of the objections to this proposal.

Even though I know you get tired of hearing it, I do feel obligated to emphasize that our staff of one and one half field FTE's would not allow us to enforce these revisions without increased staffing, so I would

EXHIBIT 4
DATE 2-6-89
HB 486

Glendive, Montana
59330



Phone (406) 365-3318
300 South Merrill

February 14, 1989

House Natural Resources Committee
Bob Raney, Chairman
State Capitol
Helena, MT 59620

Reference: HB 486

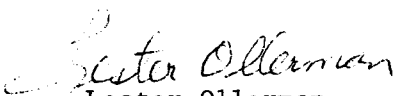
Dear Mr. Raney,

I am writing in opposition to HB 486, requiring cities to monitor groundwater at our landfill sites. We are against this bill due to the EPA requirements that are to take effect in the near future. We do not need any more regulations from the State that will add to the cost of compliance with Federal regulations.

Please read the enclosed article concerning the plight of small communities. As stated, most regulations are written for large cities and put undue burden on the small cities and towns. If the state wishes to pass this bill, they should also furnish the money to comply.

Please consider our position on this bill and the effects on small communities. Thank you!

Sincerely,


Lester Ollerman
Mayor

DATE 2-6-89

HB 486

NATaT Makes Itself Heard

By Kim Beury

The best thing Congress could do for small town America is restore revenue sharing. The next best thing is demand that federal agencies keep small towns in mind when they write regulations and not gear them only to big cities.

"It's as if all regulations are written as if all governments are for a city of 500,000," says Jeff Schiff, National Towns and Townships Association (NATaT) executive director. He points out that of the 99,000 local governments in America, 86 percent serve populations of less than 10,000, and half of the 99,000 govern populations of less than 1,000.

Nearly 1,000 members of NATaT, representing local governments throughout the United States, recently traveled to Washington, D.C., to sound the voices of small-town America.

NATaT's ninth annual, three-day conference brought together local officials who are concerned that, "It's not easy to get the federal government to focus on the fact that when they say state and local governments, they're really speaking to thousands and thousands of governments that have less than 1,000 people," according to NATaT Director of Federal Affairs Anne Cole.

"As an association, our mission is to get Washington to realize that when the federal government cuts funds, increases responsibilities of local governments and issues regulations, the majority of governments in the country don't have the things we assume that a larger community has: staff, city manager, computers, staff attorneys and all this other stuff that puts a community in a better place to help itself," Schiff says.

In Washington, NATaT provides specific guidelines for federal policy-makers to develop realistic, flexible and responsible programs and policies enabling local governments to play the role assigned to them by the federal government.

Accordingly, attendees spent much of the conference focusing on regulatory flexibility, the issue they brought to the attention of members of Congress during their march on Capitol Hill.

Regulatory flexibility, an act passed by Congress in 1980, requires all federal agencies that write regulations affecting small governments to consider the differing abilities large and small governments have in tending to national goals.

Further, the act requires agencies to complete an initial and final report proving local governments have the ability to adhere to the rules when publishing any proposed regulations.

Schiff says demanding that federal agencies observe the regulatory flexibility act "would be the next best thing Congress could do for us, short of restoring revenue sharing."

Giving a scenario of how regulatory flexibility would benefit local governments, Schiff explained during the conference,

"We have a situation where Congress writes the law and tells the federal agency to write a regulation. The regulation gets written as if everybody is a big city. Well, in the area of the environment, we could potentially be facing a disaster ... Congress tells EPA (U.S. Environmental Protection Agency) to do something about hazardous waste. EPA writes unrealistic regulations, wipes its hands and says 'We've handled that problem.'"

"But at the local level, these small communities don't have the wherewithal to implement the regulations. That doesn't mean we don't want to; it means the regs are out of sync with the reality of small towns," Schiff says.

NATaT President David Russell emphasizes the point. "A regulation that is impossible to deal with is an unenforceable and wasted regulation. Government regulations should be written so that small localities can comply with the law, and the reg flex act encourages agencies to do just that," Russell says.

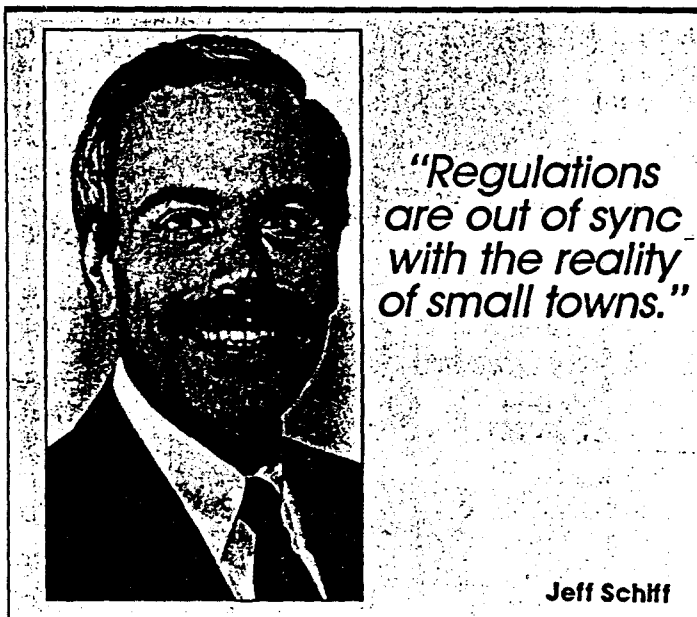
EPA Administrator Lee Thomas, who says he empathizes with the plight of small governments in this age of new federalism, has outlined action his administration will take to assist those governments.

"You will see a continuing number of standards established by EPA over the next several years," Thomas says. "I'm increasingly concerned that many (small-town governments) are going to say, 'It's not that I don't want to (implement EPA directives), it's that I don't see how it can be done.'"

Thomas says the partnership between federal and local government could be strengthened. "Smaller communities will face some of the toughest challenges as you look at the financing required to carry out the directives," he says.

Each year, NATaT honors an individual with the Dave Durenberger Local Grass Roots Leadership Award, for innovative ideas to deal with increased responsibilities and regulations. Before presenting this year's award, Sen. Durenberger of Minnesota told the delegates, "Coming here is very important ... NATaT is all about making the federal system work."

"A good government can only work uniquely when the partnership between the federal, state and local governments works most effectively. It's one thing to say, like we've said the past eight years, 'We're sending all the responsibility back home where it belongs, where you can do it more effectively,' but if the resources are not there, human resources are there. They're in the room today ... if the finances aren't there, you have a problem ... when we celebrate public service ... we really are celebrating creative imagination..." □



*"Regulations
are out of sync
with the reality
of small towns."*

Jeff Schiff

Kim Beury is the Washington correspondent for American City & County.

STATE OF MONTANA - FISCAL NOTE

Form BD-15

DATE

2-6-89

In compliance with a written request, there is hereby submitted a Fiscal Note for HB484, as introduced. H/B 484

DESCRIPTION OF PROPOSED LEGISLATION:

HB484 would require persons commercially using halogenated solvents to register that activity with the Department of Health and Environmental Sciences.

ASSUMPTIONS:

It is assumed that this legislation will involve the following hazardous waste generators: large generators (50); small generators (200); conditionally exempt generators (500). The 20 gallon reportable quantity of halogenated solvents represents approximately 100 kg. which is the amount that distinguishes a small quantity and conditionally exempt hazardous waste generator. Based on discussions with chemical distributors and staff experience, it is assumed that approximately 500 conditionally exempt generators annually will purchase and use in excess of 20 gallons of halogenated solvents.

FISCAL IMPACT:

	FY90		FY91
	Current	Difference	Proposed
	Law		Law
Expenditures:	\$12,492	\$ -0-	\$ 6,246
Revenues:	12,492	-0-	6,246
Fund Impact:	-0-		-0-
			Difference
			\$ -0-
			-0-
			-0-

Expenditures:

The department expenditures for this legislation will be absorbed within the current hazardous waste program. Activities associated with this legislation will be considered as part of the on-going hazardous waste minimization project maintained by the bureau.

Revenue:

Total revenue for FY90 would be \$12,492 and for FY91 would be \$6,246. Revenue sources are 75% annual federal grant and 25% state match from the R.I.T. account.

Fund Impact:

Staff resources redirected to solvent user registration activities will come at an expense to existing duties and activities in the hazardous waste regulatory programs.

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

Positive impact in the long term reduction in the use of halogenated solvents.

Ray Shackelford 2/6/89
 RAY SHACKLEFORD, BUDGET DIRECTOR DATE
 OFFICE OF BUDGET AND PROGRAM PLANNING

TOM HANNAH, PRIMARY SPONSOR

DATE

Fiscal Note for HB484, as introduced

HAZARDOUS SUBSTANCES

INTRODUCTION

Over the past decade, the American public has grown increasingly concerned about the effects of hazardous substances on human health and the environment. Dozens of state and federal programs have been initiated to regulate the use, storage, transport, disposal and cleanup of hazardous substances, and these programs are grounded in a relatively new, rapidly evolving and extremely complex body of natural resource law.

Development of Montana programs has largely kept pace with national initiatives. However, the 1989 Legislature will be asked to consider legislation on a range of hazardous substance issues. Some proposals involve the fine-tuning of state programs to conform to new federal requirements, others relate to the allocation of resources to specific programs, while still others call for substantive policy decisions.

This report highlights the status and legislative outlook for five major programs dealing with the management of hazardous substances in Montana: small-quantity hazardous waste generators; regulation of underground storage tanks; mini-Superfund; regulation of landfills and infectious waste disposal; and natural resource damage claims/hazardous waste site enforcement actions.

These topics reflect subjects of intense past legislative interest and/or anticipated future lawmaking activity.

For additional background information, the reader is referred a report prepared by the Environmental Quality Council for the 50th Montana Legislature (EQC 1987).

SMALL-QUANTITY HAZARDOUS WASTE GENERATORS

The Montana Hazardous Waste Act, administered by the Solid and Hazardous Waste Bureau of the Department of Health and Environmental Sciences, regulates the treatment, storage, transport, and disposal of hazardous wastes generated by state industries. The 1987 Legislature passed several minor amendments to the act, but the overall program direction remained unchanged and virtually identical to federal requirements.

An important issue during the 1987 legislative session was the question of whether the State should provide services for businesses generating small quantities of hazardous waste. The 1985 Legislature had authorized the expenditure of \$800,000 of Resource Indemnity Trust Fund interest earnings to establish a hazardous waste collection and transfer system, pending the findings of a report commissioned by the Department of Health and Environmental Sciences.

In late 1986 the contractors retained by DHES released their report recommending the establishment of a state-owned, privately operated system to collect hazardous wastes and ship them to licensed out-of-state commercial disposal facilities. As

proposed, Montana businesses would be charged for the service, but state financial support would help keep down costs and thus encourage small businesses to comply with the stringent new waste disposal laws.

With the concurrence of the Schwinden Administration, the 1987 Legislature did not endorse the contractors' recommendations to develop a state collection and transfer facility. Instead, \$212,000 of the previously allocated RIT funds was appropriated for a three-pronged effort to gather more information about the quantities of hazardous wastes produced by Montana small businesses; to determine the availability of commercial waste disposal services for these businesses; and to provide technical assistance to institute "waste minimization" programs in specific industries.

Waste Minimization Project

A report on these efforts, titled the "Montana Waste Minimization Project for Small Quantity Generators", was completed in September 1988 by Science Applications International Corporation (SAIC). In compiling the report, SAIC conducted detailed on-site audits of 114 small Montana businesses that generate hazardous wastes. These businesses fell into eight categories: laundries and dry cleaners, laboratories, printers, photographic services, metal finishing and fabrication, vehicle maintenance, pesticide applicators, and wood treaters. SAIC also interviewed companies that provide hazardous waste disposal services in Montana.

Among the report findings are the following:

- * Most hazardous waste generators in Montana do not indicate a need or desire for hazardous waste management services beyond those already available. This finding is attributed to the fact that the large majority of these businesses produce such limited quantities of waste (less than 220 pounds per month) that they are classified as "conditionally exempt" and are thus not subject to most regulations.
- * Seventeen companies provide commercial hazardous waste disposal services to Montana businesses, although only one (Special Resource Management west of Butte) has in-state offices. Companies indicated they would provide hazardous waste services anywhere in the state if transportation costs could be covered.
- * Hazardous wastes generated by small businesses are disposed of by the following methods: disposal in local landfills or through on-site burning and burial; discharge to community sewer or to on-site septic tank drainfields; transport off-site by regulated transporters; or recycling by on-site redistillation (used for many solvents). The legal disposal of small quantities of hazardous waste in local landfills is a potential problem, but its magnitude is not yet well defined.
- * The most common method of solvent disposal is mixture with waste oils, with subsequent usage for heating fuel, oil

recycling or, in some cases, road oiling. For spent solvents that are classified as hazardous wastes (as many are), these disposal methods may constitute violations of hazardous waste laws.

Based on these findings, SAIC cited a two-fold problem in Montana. First, the many conditionally exempt generators may not be aware of the need for or desirability of waste management services. Second, high transportation costs may make service to certain areas of the state unprofitable. In consideration of these factors and other report findings, SAIC recommended that:

- * The Department of Health and Environmental Sciences (DHES) should not attempt to provide hazardous waste management services to Montana small businesses. Generator needs are too diverse and transportation considerations would make a single collection and transfer station ineffective.
- * DHES should continue to educate small businesses on waste minimization techniques specific to their industries.
- * DHES should provide all small-quantity generators with information on hazardous waste service companies active in Montana.
- * Additional efforts are required to prevent the improper disposal of waste oil/solvent mixtures. Testing of waste oils should be required prior to pick-up by oil recyclers and solvent users should be informed about recycling options, including the opportunities for shared use of distillation equipment.
- * The ongoing use of septic tank haulers for the disposal of "hot tank" wastes (metal-laden sludges from radiator repair shops) should be investigated, both in terms of volume handled and the environmental consequences of this virtually unregulated means of disposal.

Legislative Outlook

The Department of Health and Environmental Sciences intends to emphasize education and technical assistance to encourage Montana's small-quantity generators to further minimize their production of hazardous wastes and to dispose of wastes properly. These efforts will continue to be backed up by the regulatory structure in place under the Montana Hazardous Waste Act, and additional attention will be given to addressing the problems cited in the SAIC report.

The department has drafted legislation to amend the Montana Hazardous Waste Act to conform to 1984 amendments to the federal hazardous waste management law. The legislation would authorize DHES to order violators to cleanup off-site pollution and would allow the department to take legal action against persons who contributed to hazardous waste contamination through past illegal disposal practices.

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EXHIBIT

DATE

2-6-89

HB

484

TECHNICAL SUMMARY REPORT
MONTANA WASTE MINIMIZATION PROJECT
FOR SMALL QUANTITY GENERATORS

Submitted to:

State of Montana
Solid and Hazardous Waste Bureau
Department of Health and Environmental Sciences
Room B-201, Cogswell Building
Helena, Montana 59620

Submitted by:

Science Applications International Corporation
626 Columbia Street NW, Suite 1-C
Olympia, Washington 98501

September, 1988

MDHES Contract No. 800329
SAIC Project No. 1-817-00-180-00

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The facilities interviewed generally send oil and solvent soaked rags to the local landfill. Spent solvents and solvent sludges are either taken to the local landfill or recycled as much as possible, and the sludges disposed of at the local landfill. Only one of the facilities audited appeared to be a Small Quantity Generator. This facility utilizes a permitted off-site TSD for disposal of sludges and some wastewaters. The other metal fabrication facilities appeared to be Conditionally Exempt Small Quantity Generators, generating less than 100 kg/month of any hazardous wastes. Only one facility indicated a need for and difficulty in finding a hazardous waste transporter or disposal facility, due apparently to the small quantity of wastes accumulated over time.

2.2.6 Vehicle Maintenance

This industrial category comprised the largest category of facilities audited over the course of this study. Included were dealerships with service facilities, commercial and municipal vehicle maintenance services, auto body repair services, heavy equipment (farm and construction) repair service, radiator shops, and aircraft maintenance. Forty-eight facilities were included in the audits.

Regardless of size and ownership of the operations, all vehicle and aircraft maintenance facilities include basic engine and equipment repair. Integral to these operations is the parts cleaning and equipment lubrication, change-out of lubricating oils, engine fluids, and worn parts. The largest volume of waste produced in the maintenance facilities is waste oils. These are typically drummed, often used for home heating fuel, and sometimes sold to a recycler or waste oil hauler. Many shops utilize solvents which are bought under contract and serviced by the contractor supplying the solvent and the parts cleaning unit. If this is not the case, a number of shops buy and reuse solvents until they are no longer effective. At this time, they may be redistilled on site, but in some cases, auditors determined that the spent solvents are being mixed with waste oils and treated as a non-hazardous waste. This may represent a substantial concern with regard to the use of waste oils as home heating fuels or the legal use of waste oils to oil dirt roads in rural portions of the state. Worn parts are either rebuilt, or disposed of at the local landfill if they cannot be recycled as scrap metal.

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Solvents utilized in the auto maintenance industry may exhibit the characteristic of ignitable (EPA Waste I.D. D001), or may be a chlorinated compound (EPA Waste I.D. F-0XX). Waste oils are not considered to be a hazardous waste under Federal Law.

Auto body shops and repair facilities that paint vehicles generate spent paint thinners and strippers as well as waste paints, paint sludges and filters. The thinners may be listed or characteristic hazardous wastes; the paints may also be hazardous due to metal content. In general, the shops interviewed reuse thinners as long as possible before wasting them or recycling them. Painting is typically done in some kind of a paint booth where overspray is collected on a filter or in a water curtain system.

Radiator shops typically utilize hot caustic baths for radiator cleaning. This operation generates a metal-rich sludge at the bottom of tanks which must be periodically cleaned out. In addition, the caustic in the hot tanks must be periodically changed out. Audits conducted on these facilities revealed that sludges are handled in one of several ways: pumped out by a septic hauler and disposed off-site at unknown locations, pumped out and disposed on the property, flushed to the sanitary sewer, flushed to an on-site septic tank, or taken to the local landfill. The caustic liquid is generally neutralized and discharged to the sanitary sewer, if and when it is changed out.

Few if any of the vehicle maintenance facilities audited can be classified as any other than Conditionally Exempt Small Quantity Generators. Most facilities generate a large volume (several hundred gallons per year) of waste oils; if solvents are mixed with these oils such that the mixture is a hazardous waste, then the entire volume would be a hazardous waste. Currently, most facilities are not testing waste oil/solvent mixtures to determine if they are hazardous prior to selling or re-using these waste materials.

Few of the facilities audited indicated a need for hazardous waste transportation and management services, other than a need for some type of solvent recycling. Safety-Kleen is available in western Montana to provide this service; in the

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4.0 CONCLUSIONS AND RECOMMENDATIONS

Small Quantity Generator audits, RCRA compliance/waste minimization workshops, and hazardous waste services surveys were performed to determine how wastes are being generated and disposed of in Montana, and what services are available to handle those wastes. The following conclusions have been drawn from this study:

- Of 114 Small Quantity Generator audits conducted, at least 90 percent proved to be Conditionally Exempt Generators (CEGs), generating less than 100 kg per month of listed or characteristic hazardous waste. These Conditionally Exempt Generators are not subject to most of the regulations for waste management and disposal under RCRA.
- Hazardous wastes generated by many SQGs and CEGs are being disposed by one of the following methods: disposal in the local landfill or on-site in burn pits or burial pits; discharged to the sanitary sewer or to an on-site septic tank and drain field; recycled by redistillation on-site; disposed off-site by regulated transporter. Disposal of hazardous wastes in local landfills appears to be a potential problem which is not currently well defined. Removal of hot tank wastes by septic haulers was also identified as a potential problem because this waste stream may contain high concentrations of heavy metals.
- Waste oils and solvents were the largest volume of wastes identified during the generator surveys. This corroborates the results of a special solvent and used oil study conducted for DHES in 1987. The most common method identified for solvent disposal in this study was to mix solvents with waste oils and utilize the mixture for fuel for home or business, or sell to an oil recycling operation. Waste oils which may or may not be mixed with solvents are also used for road oiling in various parts of the state.
- Most generators interviewed did not indicate a need or desire for hazardous waste management services beyond those already available to them. It is likely that the reason for this is the high number of CEGs interviewed who

to many of the RCRA regulations, and who may not be aware of the need for or desirability of waste management services. Secondly, while hazardous waste management services exist in the state, there is a definite problem of profitably serving many portions of the state due to high transportation costs. No single transfer station or service appears to be the solution to either of these problems. As a result, it is not recommended that the DHES provide these services. Instead, the following recommendations are made:

- Efforts should be made by the Montana DHES to educate SQGs and Conditionally Exempt Generators regarding waste minimization techniques specific to the various industries in the state. This could include a periodic state-wide direct mail newsletter or periodic workshops for specific types of generators. Coordination with the Montana Waste Information Exchange may be a way to disseminate some of this type of information.
- The DHES should provide to generators, via direct mail, information regarding those hazardous waste service companies active in the state. No endorsement would be implied if this list is comprehensive. The existing lists available upon request from the DHES should be updated periodically, and expanded to include an annotated description of the companies; these could then be utilized for direct mail to all Small Quantity and Conditionally Exempt Generators identified within the state.
- Parallel with educational activities regarding waste minimization, it appears that additional efforts are required to prevent the improper disposal of waste oil/solvent mixtures. This should be a two-pronged effort: one aimed at requiring testing of waste oils prior to pick-up by oil recyclers and the other at providing information to solvent users regarding on-site distillation. The DHES should encourage the shared use of a single distillation apparatus by several generators in a community. Again, this is part of an educational process, which may require demonstrations of such equipment in various localities and an information bulletin regarding the different types of distillation units available.

Bill Potts
State Department

EXHIBIT. 7
DATE 2-6-89
HB HB 484

TESTIMONY FOR HALOGENATED SOLVENT BILL
HB 484

I have been asked by Representative Hannah to address certain technical issues associated with HB 484 which requires persons commercially using halogenated solvents to register that activity with the Department of Health and Environmental Sciences. Halogenated solvents are commonly used as degreasers and cleaning agents, and are associated with such activities as vehicle maintenance, dry cleaning, and laboratories. Common halogenated solvents in use include methylene chloride, tetrachloroethane, trichloroethene, and 1,1,1-trichloroethane.

Halogenated solvents can be of particular concern from a public health standpoint because of the potential toxic effect to human health. Some of these solvents can readily be transmitted orally or dermally into the human body and cause irreversible harm to human organs.

Historically, there has been a gradual movement toward the use of non-halogenated solvents which have a less toxic impact on humans. This movement is most evident in the area of vehicle maintenance where now most commonly ~~are~~ mineral spirits ^{is} used as a degreaser.

However, there are certain industries where halogenated solvents will for the foreseeable future be the solvent of choice. Such industries includes dry cleaning, electrical parts repair, and laboratories.

It is the department's understanding that the intent of HB 484 is to encourage users of halogenated solvents to substitute the use of such solvents for less toxic or hazardous cleansing agents whenever possible. Further, the legislation would promote proper hazardous waste handling of such solvents. As such, this legislation would be regarded as a very effective part of the department's on-going waste minimization program.

Hause Natural Resource COMMITTEE

DATE 2-6-89

SPONSOR Rep. Brady

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

CS-33

VISITORS' REGISTER

House Natural Resources COMMITTEE

BILL NO. HB 498

DATE 2-6-89

SPONSOR Rep. Brady

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

Ken Natural Resources COMMITTEEBILL NO. HB484DATE 2-6-89SPONSOR Rep. Hannah

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Bill Potts	State Health Dept.	x	
Chris Kaufman	MEIC	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.